

1636. *March 9.* ROBERT KEITH *against* WILLIAM MURRAY.

ROBERT Keith, merchant in Edinburgh, charged William Murray in Longherdmeston to infest him in certain lands holding of him by James Whitehead, from whom the charger had comprised the same. He suspended upon this reason, That he was content to enter him, he paying a year's duty to the suspender. Answered for the charger, That the compriser should not be prejudged of brooking the lands comprised, by the said James Whitehead's being year and day at the horn: For, if the superior should possess himself of the rebel's lands, as having right to his liferent by virtue of his rebellion, and so seclude the compriser from the said lands during the rebel's lifetime, it were against all equity and reason, that the superior should both brook the lands and get a year's rent of the same compriser; but at least the payment of the year's rent should be suspended till the decease of the rebel. Replied, The superior cannot be obliged to receive a vassal, except he pay him a year's rent, conform to the Act of Parliament; neither ought he to renounce any right competent to him upon any other ground. But, if the compriser will force him to enter him, it must be with reservation of any right the superior hath acquired, either by liferent or otherwise. Many of the Lords were of opinion, that, if the superior had been in possession of his vassal's lands, by virtue of his liferent falling to him, it had been a hard thing to make the compriser pay a year's duty, and be debarred in the meantime, by the superior himself, from the possession of the lands. But, in respect this was not alleged, save only that the superior might hereafter exclude the charger from the lands, if it were not here declared, that he should not do it;—they thought it not reasonable to compel the superior to make any such declaration.

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1636. *March 10.* MALCOLM CRAWFURD of Cartsburn *against* The LAIRD of MURDESTON.

THE Laird of Murdeston being obliged, by contract of marriage, to infest his wife in liferent of all lands that should be conquest by him during the marriage;—they two being divorced, she assigns the right of her contract to Malcolm Crawford of Cartsburn, who pursued the said Laird of Murdeston for fulfilling the same. The pursuer condescended upon a five-merk land of the barony of Murdeston, that the defender had conquest, since the marriage, from John Gray, wherein he sought to be infest during her lifetime. Alleged, That could not be reputed conquest, because John Gray, being vassal to the defender and his predecessors, and the defender holding his lands of the Earl of Bothwel, by the said Earl's forfeiture, both the said John Gray's lands, and the defender's own, fell to the crown, and were disposed to the Laird of Preston: who, being the defender's tutor, in satisfaction of his tutor-accounts, resigned the said whole barony of Murdeston in favours of the defender; who having acquired it thus, had right to the said John Gray's land by this forfeiture, and so cannot be thought to have conquest it from John Gray. Replied, The pursuer produced the dis-